

1 International Criminal Court
2 Trial Chamber VII - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse
6 Arido - ICC-01/05-01/13
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and
8 Judge Raul Pangalangan
9 Trial Hearing
10 Wednesday, 28 October 2015
11 (The hearing starts in open session at 10.01 a.m.)
12 THE COURT USHER: All rise.
13 The International Criminal Court is now in session.
14 PRESIDING JUDGE SCHMITT: Good morning, everybody, and welcome.
15 Courtroom officer, please call the case.
16 THE COURT OFFICER: Good morning. Yes, Mr President.
17 Situation in the Central African Republic, in the case of The Prosecutor versus
18 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
19 Fidèle Babala Wandu and Narcisse Arido, and the case reference ICC-01/05-01/13.
20 And for the record, we are in open session.
21 PRESIDING JUDGE SCHMITT: I ask for the appearances of the parties.
22 MR VANDERPUYE: Good morning, Mr President, your Honours, everyone. The
23 Prosecution is in the same configuration as yesterday.
24 PRESIDING JUDGE SCHMITT: Defence please.
25 MR GOSNELL: Good morning, Mr President. Appearances for Mr Mangenda are

1 the same as yesterday.

2 MR DJUNGA: (Interpretation) Good morning, Mr President, your Honours. Our
3 team remains the same.

4 MR TAKU: Good morning, your Honours. Arido's Defence is unchanged.

5 MR KILENDA: (Interpretation) Good morning, Mr President, your Honours.
6 Our team is the same.

7 MS TAYLOR: Mr President, your Honours, the Defence for Mr Bemba remains the
8 same. Thank you.

9 PRESIDING JUDGE SCHMITT: Thank you very much.

10 Then I also welcome Mr Songa as the counsel for the witness in the courtroom and I
11 also welcome the witness again in the courtroom. Good morning, Mr Witness.

12 WITNESS: CAR-OTP-P-0198 (On former oath)

13 (The witness speaks French)

14 THE WITNESS: (Interpretation) Good morning, your Honour.

15 PRESIDING JUDGE SCHMITT: We are going to continue the examination of the
16 witness by the Prosecution. Mr Vanderpuye has the floor.

17 MR VANDERPUYE: Thank you, Mr President. With your leave, I'll remain
18 seated?

19 PRESIDING JUDGE SCHMITT: Yes.

20 MR VANDERPUYE: Thank you.

21 QUESTIONED BY MR VANDERPUYE: (Continuing)

22 Q. Good morning, Witness. Can you hear me okay?

23 A. I can hear you, Counsel.

24 Q. At the moment we are in open session, which means I would ask you to pay
25 special attention not to reveal your identity. Do you understand?

1 A. I'm with you.

2 Q. And if there is anything that I ask you that calls for you to do so, let us know
3 and I will ask the Presiding Judge if we can move into private session, okay?

4 A. The Presiding Judge said that yesterday.

5 Q. Yesterday you indicated that you had a diary that you wanted to consult
6 regarding the approximate date or the date of your meeting with Mr Djunga in this
7 year. Do you have that diary with you?

8 A. Unfortunately, I don't have it. I forgot it in Paris, and it is in the possession of a
9 lady who is in China. I believe I will have it in the next few days.

10 Q. All right. And let me just make sure that I've got something clear in the record
11 of this case. Your meeting with Mr Djunga, was it recorded?

12 A. I believe I answered that question yesterday, Counsel.

13 Q. All right. Did you meet with any member of the Bemba Defence in 2012?

14 A. Who are you referring to specifically?

15 Q. Mr Kilolo, let's start there.

16 A. Prior to my testimony I met with Mr Kilolo. And I cannot tell you the precise
17 date, whether it was 2011, '12 or '13, but I know that I testified in 2013. Yes, but the
18 fact is we met.

19 Q. How many times did you meet with Mr Kilolo before you testified in 2013?

20 A. I believe that I said that in my testimony. If you can crosscheck, I think you
21 can confirm it, Counsel.

22 Q. Did you provide Mr Kilolo with a statement when you met with him prior to
23 your testimony?

24 A. You asked me a question a short while ago, I gave my testimony in the
25 courtroom and I said approximately the number of times I met with Mr Kilolo.

1 Q. My question was did you provide him with a statement when you met with
2 him?

3 A. I believe that before my testimony in September 2013, if you consult the archives
4 of the ICC, it would be able to be known whether I gave a statement at that time.

5 Q. What is your recollection, sir? Did you provide Mr Kilolo a statement -- with a
6 statement when you met with him prior to your testimony or not, or do you not
7 remember?

8 A. I believe I've answered that question, Counsel.

9 Q. Answer it again please, sir.

10 A. I said that I met with Mr Kilolo and that you can check in the archives of the
11 ICC whether a statement was indeed given.

12 Q. Sir, I'm asking you if you gave a statement to Mr Kilolo. I'm not checking
13 anything. Do you want to answer the question or not?

14 MR POWLES: Mr President.

15 PRESIDING JUDGE SCHMITT: Mr Powles.

16 MR POWLES: We just wonder whether it might be a question of an interpretation
17 and whether the witness appreciates the difference between an interview and
18 answering questions and providing a statement in the form of a written statement
19 and signed.

20 PRESIDING JUDGE SCHMITT: I assume, Mr Vanderpuye, we are talking about a
21 written statement? So perhaps we can give it a last try with the witness to ask him
22 this, if he has given something written, what you think, what you qualify as a
23 statement.

24 MR VANDERPUYE:

25 Q. Did you have an interview with Mr Kilolo in 2012?

1 A. I think that is clear. Maybe the Presiding Judge should clarify matters. I was
2 interviewed by Mr Kilolo; he put certain questions to me and I gave him the answers.

3 Q. When was that?

4 A. Before my testimony in the Court. I really know -- I really don't know how
5 long before but it was before that.

6 Q. Was that interview recorded?

7 A. You asked a question whether it was interviewed?

8 THE INTERPRETER: That's what the witness says.

9 THE WITNESS: (Interpretation) I don't know what else I can answer to that. If I
10 understood you well, you said interviewed. Is that what you said?

11 MR VANDERPUYE:

12 Q. That's what I said.

13 A. Yes, that is correct, he interviewed me.

14 Q. Besides Mr Kilolo, who was present during that interview?

15 A. In my testimony before the Court I gave details about that, so the Court can
16 assist you with that issue.

17 Q. I'll ask my question again. Besides Mr Kilolo, who was present during that
18 interview?

19 A. Mr Kilolo is present with you in the courtroom. He knows who was with him.
20 I'm here for something else, sir.

21 Q. You're here for this, sir. And Mr Kilolo is not testifying, you are. So my
22 question is again: Besides Mr Kilolo, who was present during that interview?

23 A. He knows. He is in the courtroom and he knows with whom he was.

24 Q. Witness, I'm going to ask my question one more time. If you don't know the
25 individual's name who he was with, then you can describe that individual to the best

1 of your recollection. Besides Mr Kilolo, who was present during that interview?

2 A. That is what I wanted you to say. We have to be specific, not general. It was
3 a white lady who was present with him.

4 Q. Besides that interview with Mr Kilolo and the white lady who was present with
5 him, did you interview with Mr Kilolo or anyone else for the Bemba Defence prior to
6 your testimony in 2013?

7 A. Before I met with Mr Kilolo, I had met with Maître Nkwebe. That is what I
8 testified to yesterday.

9 Q. Was your meeting with Maître Nkwebe recorded?

10 A. My meeting with Mr Nkwebe was not recorded.

11 Q. I'm going to show you a document which I'd like you to take a look at please,
12 CAR-D21-0004-0709.

13 It's at tab 23 for the Chamber's benefit, please. It shouldn't be broadcast, by the way,
14 right? Okay.

15 PRESIDING JUDGE SCHMITT: I think it is very important for the Bench that it is on
16 the monitor because we have binders and we have tabs, but we have no numbers on
17 the tabs. So we would --

18 MR VANDERPUYE: Excuse me. Sorry about that, Mr President.

19 PRESIDING JUDGE SCHMITT: I thought it was only -- affected only the Presiding
20 Judge. It obviously affects also my two colleagues, so we could find it, we could
21 count in the binder, but I think that would be a cumbersome exercise.

22 MR VANDERPUYE: Apologies, Mr President. I think we have it on the screen
23 now. It is not being broadcast.

24 Q. And, Witness, as I mentioned --

25 PRESIDING JUDGE SCHMITT: If it is -- if it is on the screen it will be okay.

1 MR VANDERPUYE: Right. We'll try to do everything this way.

2 Q. Witness, the document should be in front of you now and you should be able to
3 see it. Don't read anything from it. I will ask you first, do you recognize your name
4 on this document? And you can answer just yes or no, but don't read your name out
5 loud.

6 A. Yes, I can see my first name and my surname.

7 Q. We'll go to the next page, please. That's page ERN number ending 0710.

8 MR POWLES: Mr President, to be fair to the witness, it may be appropriate for my
9 learned friend to outline the provenance of this document and express what it is and
10 where it's come from before proceeding with any questions upon it.

11 PRESIDING JUDGE SCHMITT: Yeah, indeed, I agree to that. Please, you could
12 perhaps -- I, of course, have in mind what you are perhaps heading to, but indeed
13 what Mr Powles said is sustained.

14 MR VANDERPUYE: All right. Well, I would go back to the first page then.

15 THE WITNESS: (Interpretation) I would like to say something. Yesterday I
16 expressed a concern, but counsel did not take it into consideration that concern. He's
17 going directly to something else. If the Presiding Judge agrees that the trial should
18 be fair, then justice should be applicable to everyone, and should that be the case,
19 then everyone's concern has to be taken into consideration.

20 And a concern that I expressed yesterday just before the end of the hearing, I thought
21 counsel would come back to that so that we sort out something before continuing, but
22 he has totally ignored my concern and he's going directly to something else. So I
23 hope the Presiding Judge will ensure that we sort that matter out before we proceed
24 because that is the only fair way that we can continue.

25 PRESIDING JUDGE SCHMITT: I'm not quite sure what you're referring to. If it is

1 your security concerns and concerns of protection that you uttered yesterday, if we
2 are on this page, we could go and you could shortly confer with your counsel, we
3 could go also into private session.

4 THE WITNESS: (Interpretation) That is not the issue, your Honour. I'm referring
5 to a series of phone numbers that counsel asked me to write down. He said that
6 those were my numbers. And my concern was to know where he is heading to with
7 those numbers that he claims are my numbers. What does he want to do with them?
8 Did I have conversations on those numbers? And with whom? I really need to
9 understand that because you cannot simply tell me to write down numbers without
10 telling me the purpose of those numbers and then suddenly you move onto
11 something else.

12 So I would wish to understand that. And if those are really my numbers, then I will
13 accept. And tell me who I was talking to so that I should understand where we are
14 going, Mr Presiding Judge.

15 PRESIDING JUDGE SCHMITT: I think now I have understood because when we
16 concluded, I think, yesterday it was about these numbers. But, Mr Witness, it is of
17 course so that the parties -- at the moment, the Prosecutor is putting questions to you,
18 and you answer them to the best of your knowledge. And the Chamber assumes
19 that according to the solemn undertaking that you have given that you have done this
20 yesterday.

21 The Prosecutor is now at another point which means that he has other questions and
22 obviously is satisfied with what you have said yesterday. So we continue with the
23 questioning. And please, look what is on the screen and then we
24 can -- Mr Vanderpuye can continue to put questions to you.

25 MR VANDERPUYE: Thank you, Mr President.

1 Q. First thing I want to ask you is do you see Mr Kilolo's name on this document
2 that's in front of you?

3 A. Yes, I can see my name and I can also see Kilolo's name.

4 Q. This document was provided to the Court by the Kilolo Defence in 2014.

5 I'd like to go to the next page, please, that is page ending 710. Do you recognize
6 your name on this page, sir?

7 A. Yes, I can see it just like you.

8 Q. And you can see at least a couple of questions on this page that are purportedly
9 posed to you. Do those questions comport with your recollection of the interview
10 that you had with Mr Kilolo before your testimony in 2013?

11 A. Can you kindly repeat your question, please?

12 Q. Yes. On this page you can see a couple of questions that were posed
13 purportedly to you, and I want to know whether or not looking at those questions
14 they comport with your recollection of the interview that you had with Mr Kilolo.

15 A. Yes, that is correct, I remember very well.

16 Q. To your recollection, was that interview recorded?

17 A. Can I have a couple of moments, Mr President?

18 PRESIDING JUDGE SCHMITT: Yes, of course.

19 MR POWLES: Mr President, I wonder whether the confusion that's arising is as a
20 result of the date on the first page of the document. And my learned friend
21 indicated, and rightly so, this document was provided by the Kilolo Defence in 2014.
22 And I wonder whether that might be confusing the witness because, of course, there
23 is another date on the front page, which pertains more to the year in which the
24 interview was conducted. And that may assist the witness in terms of
25 orienting -- orientating himself as to what this document actually is and purports to

1 be.

2 PRESIDING JUDGE SCHMITT: Indeed, that sounds reasonable what you are saying.

3 So perhaps, Mr Vanderpuye, we have to clarify at what time squarely we are talking
4 about.

5 MR VANDERPUYE: I've asked the witness, Mr President, repeatedly when he met
6 with Mr Kilolo, and he seems to have no indication to his recollection as to when that
7 occurred. Now he says he recalls, so I've asked him whether or not it reflects the
8 interview, and then I'll ask him what the date of that interview is.

9 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, it is not -- it is not wrong what Mr
10 Powles is saying that on the first page we have a date 2014, and you perhaps want to
11 refer to another time, another point in time, so why not give the witness a hint what
12 we are talking about, and then perhaps he will answer and we can go on.

13 MR VANDERPUYE:

14 Q. Did you give a statement to the Kilolo Defence or did you provide this
15 interview to the Kilolo Defence in 2012?

16 A. Kilolo's team or Bemba's team? Because you, yourself, said yesterday I
17 (Overlapping speakers) --

18 Q. You're right. You're right, Bemba's team. You're right. The Bemba Defence,
19 did you provide this interview with Mr Kilolo in 2012?

20 A. I have told you that I answered that question a few minutes ago, and I said that
21 before my testimony before the Court I had contact with Bemba's Defence. So before
22 September 2013, I met with the Bemba Defence. And this is the time indicated, the
23 document can confirm that. I said that a short while ago and I'm repeating it once
24 again.

25 Q. Other than the interview that you described, did you have any other interview

1 with any other member of the Bemba Defence other than Mr Nkwebe prior to your
2 testimony in 2013?

3 A. I have already answered this question a while ago, in fact a very short while ago.
4 Before I met with Kilolo's counsel, who replaced Mr Nkwebe -- well, before that I met
5 nobody else. So before -- that's what I said exactly a few minutes ago.

6 Q. Okay. So you can confirm that this is the only -- reflects the only interview that
7 you had with Mr Kilolo prior to your testimony?

8 A. That is not what I said. You said yourself earlier -- you asked me how many
9 times I met Maître Kilolo before I testified before the Court. I said that I did not
10 recall how many times Mr Kilolo met with me prior to the time when I testified before
11 the Court in 2013. That is what I said.

12 Q. Maybe it's a translation issue, but my question is: How many times did
13 you -- how many times did you undertake an interview with Mr Kilolo? Not how
14 many times did you meet him, how many times did you interview with him?

15 A. Help me to know this because you have the documents before you. If I say
16 that it was a long time ago, did I see him five times, 10 times, 30 times, two times, four
17 times? I think I have said this during the course of the proceedings.

18 Q. How many times did you sit down with Mr Kilolo while he posed to you
19 questions and you gave him answers before you testified in 2013? What I want to
20 know is how many times you had an interview with him. And if you don't know the
21 answer to that question, just say "I don't know."

22 A. I am not going to answer by saying that I do not know. It's simply the date.
23 This is why I have a reservation. I don't want to say something that is contrary to
24 what I've already said because two years ago I knew exactly how many times I had
25 met with him and, in fact, I testified to this effect before the Court.

1 Q. I'm going to play you an intercept, it's CAR-OTP --

2 MR POWLES: Mr President.

3 PRESIDING JUDGE SCHMITT: Wait a moment please, Mr Vanderpuye.

4 Mr Powles.

5 MR POWLES: Again, perhaps to orientate the -- perhaps to orientate the witness

6 before listening to the recordings, it may be of help if Mr Prosecutor outlines what the

7 Prosecution say these recordings are and purport to be.

8 PRESIDING JUDGE SCHMITT: I agree.

9 MR VANDERPUYE: Mr President, with all due respect, I'd like the witness to say

10 what they are. I don't want to prejudice his answer by telegraphing to him what his

11 answers should be.

12 PRESIDING JUDGE SCHMITT: That makes sense, indeed. So please play it, yeah.

13 MR VANDERPUYE: It's CAR-OTP-0074-1002. It would normally be behind tab 1

14 of your binders. It is excerpt 1. We'll have to wait for the signal from the booth and

15 also from the Registry. It should be played by the way in private session.

16 PRESIDING JUDGE SCHMITT: We go into private session, please.

17 MR VANDERPUYE: Yes. Thank you for reminding me.

18 (Private session at 10.36 a.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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